

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION THIRTY-THREE**

IOC-DAVENPORT, INC., D/B/A ISLE OF CAPRI,
RHYTHM CITY BOAT 1/

Employer

and

TEAMSTERS, CHAUFFEURS AND HELPERS
LOCAL UNION NO. 371, AFL-CIO 1/

Petitioner

DECISION AND DIRECTION OF ELECTION

Case 33-RC-4562

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:2/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.3/

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time dealers and dealer/supervisors in the Employer's Table Games Department, but excluding all other employees, including the general manager, senior director of operations, director of operations, games department manager, shift managers, assistant shift manager/pit administrators, table games supervisors, supervisors/pit administrators, office clerical employees, maintenance employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local 371, AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the *33rd Region, Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602*, on or before February 14, 2001. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by February 21, 2001.

Dated February 7, 2001
at: Peoria, Illinois

/s/ Ralph Tremain
Ralph Tremain, Regional Director
Region 14

1/ The Employer's and the Petitioner's names appear as amended at the hearing. I have administratively noted and added the Petitioner's proper affiliation.

2/ I have carefully considered the record evidence, the parties' statements on the record, arguments on the record and the briefs filed by the parties.

3/ The Employer is an Iowa corporation engaged in the business of operating a riverboat casino at 130 W. River Drive, Davenport, Iowa. During the past twelve months, a representative period of time, the Employer purchased and received goods valued in excess of \$50,000 from points located directly outside the State of Iowa. During this same period it had gross volume of business in excess of \$500,000. Upon these facts, I find that IOC-Davenport, Inc. d/b/a Isle of Capri, Rhythm City Boat, is an employer engaged in commerce within the meaning of the Act. There are approximately 93 employees within the unit found appropriate herein.

4/ The issue in this case involves the composition of the bargaining unit. The Petitioner seeks a unit of dealers, dealer/supervisors, table games supervisors, and supervisor/pit administrators in the Employer's Table Games Department. The Employer takes the position that dealer/supervisors, table games supervisors, and supervisor/pit administrators are supervisors within the meaning of Section 2(11) of the Act and should be excluded from any unit found appropriate herein.

BACKGROUND

The Employer operates "Rhythm City Casino," a riverboat casino, in Davenport, Iowa. The riverboat consists of nine departments: table games, slots, cage, marine ops, security, porters, food and beverage, finance and the hotel. Only certain employees of the table games department are at issue in this proceeding.

The table games department provides a gambling and entertainment area where guests play blackjack, craps, roulette, Caribbean Stud, Pai Gow Poker, and Spanish 21. The department is comprised of 22 gaming tables located in a 75 foot by 25 foot rectangular pit at the center of the casino.

The table games manager has overall responsibility for the smooth running of the table games department. The supervisory hierarchy under the Table Games Manager (in descending order) consists

of two shift managers, four assistant shift managers/pit administrators, four supervisors/pit administrators, and 15 table game supervisors. In addition, there are 12 dealer/supervisors, and 81 dealers in this department.

The parties stipulated that the general manager, senior director of operations, director of operations, games department manager, shift manager, and assistant shift managers/pit administrator possess certain supervisory indicia as set forth in Section 2(11) of the Act, including the authority to hire and fire or to effectively recommend such action, and that, on that basis, they should be excluded from any unit found appropriate herein. The parties also agreed that the dealers in the table games department should be included in the unit.

Dealers

The dealers typically stand behind a gaming table and conduct one of the above-described games. They are responsible for maintaining guest service and employee relations. They must also maintain game security and protect the money on the table. Gaming is conducted on a 24-hour-a-day basis and the dealers are employed on a three shift basis: 10:00 a.m. to 6:00 p.m. (day shift), 6:00 p.m. to 2:00 a.m. (swing shift), and 2:00 a.m. to 10:00 a.m. (graveyard shift). Approximately 25 dealers work the day shift, 45 work the swing shift and eight to ten work the graveyard shift.

For each shift there is a “road map” (a map of the pit) that identifies what tables will be open and who will be working them. The road map is prepared by pit administrator/assistant shift managers. The road map also identifies when each of the dealers will get their breaks. Generally, a dealer stands at a specific gaming table, conducting the game for a period of approximately 40 minutes until a relief dealer taps them on the shoulder (called “tapping them out”), signifying that it is time for the dealer’s break. At that point, the dealer takes a 20-minute break and then returns to the same game.

Dealers wear uniforms consisting of a white tux shirt, black pants, black shoes and an apron. They are paid an hourly wage of between \$5.31 and \$6.81 plus tips (called “tokens”) from casino guests. These tokens average between \$5.00 and \$8.00 an hour. The Employer provides the dealers with a free meal each shift, or they can receive a 50% discount at one of the Employer’s restaurants. Dealers may not eat in the guest areas but are required to eat in the employee break room.

Table Game Supervisors

The pit is divided into four sections: craps, 1A, 1B and 1C. Table game supervisors are responsible for the smooth operation of the games in their assigned section. Up to four table games supervisors may be assigned to the craps section, with typically one table games supervisor assigned to each of the other sections. The table game supervisors also protect the integrity of the game and they are responsible for the gaming equipment in their areas. The dealer cannot open or close his table without the assistance of a table games supervisor. The table games supervisor has the key to open the shoe box, which holds the cards, as well as the tray lid, which holds the chips (called “checks”). A dealer and a table games supervisor work together to reconcile the inventory sheet with the checks that are in the tray. Both the dealer and supervisor sign off on the completed inventory sheet.

During the course of his shift, a table games supervisors handle problems arising at the gaming table, such as a dealer involved in a game over his experience level, an intoxicated guest or a conflict between a dealer and a guest. The table games supervisor may “tap out” a dealer for a break, call security, or issue “comps” (complimentary items for guests, such as a meal ticket or gift shop certificate) as appropriate to resolve the problem. (If the supervisor “taps out” the dealer for an unscheduled break or moves him to another table, he must thereafter notify the assistant shift manager/pit administrators (or above).) The supervisor also handles security matters. He completes a cash transaction report (CTR) (required by federal law) when a guest cashes in or out for \$10,000 or a suspicious activity report (SAR) when there appears to be suspicious activity at the games table.

According to their job description, table game supervisors “insure that the dealers deliver all the requirements of their job description” and “they are responsible for counseling, guiding and instructing personnel in the proper performance of their duties.” The Employer trains the supervisors for these responsibilities through “core training” – eight modules of training that must be successfully completed within 90 days of promotion to the supervisory position. In these modules, employees classified as table games supervisor (and higher) are taught proper hiring procedures, interviewing techniques, completion of forms, leadership skills, and attendance documentation. They also receive training on sexual harassment, EEOC, FMLA and ADA issues.

Table games supervisors participate in the hiring of dealers, specifically, in the audition of dealer applicants. (An audition is where the applicant is put into an actual game setting so their dealing skills can be observed.) At the audition, the table games supervisors grade dealer applicants on a variety of categories, including potential, appearance, guest relations, check cutting, buy-ins, change procedure, and shuffling. These grades and the comments of the table games supervisors are given great weight in the Employer's decision as to the hiring of dealer applicants. Table games supervisors also teach at the dealers' school which is made available to inexperienced dealer applicants. These teachers grade the performance of the applicants in their classes and recommend whether a dealer applicant should be permitted to audition for a position.

Table games supervisors prepare performance evaluations of dealers, rating them in critical areas and making suggestions for improvement. Supervisors also write positive or negative "work histories" – comments about a dealer's performance that become part of the employee's personnel file. Both the evaluations and the work histories are seriously considered in future personnel actions, such as promotions or transfers.

Table games supervisors issue verbal and written warnings to dealers. Situations requiring such discipline might include a dealer refusing to speed up or slow down the pace of a game at the direction of the supervisor or engaging in a shouting match with the supervisor. Table games supervisors can also recommend suspension or termination of a dealer. The Employer gives deference to these recommendations in making the ultimate decision to suspend or terminate dealers. They are also involved in the scheduling of dealers. Each shift has a scheduling supervisor who determines the weekly schedule for the dealers. Dealers' requests for time off may be made to either the scheduling supervisor or a table games supervisor. Although the shift manager has the actual authority to approve the request, the scheduling supervisor usually tries to accommodate the request when preparing the schedule. The schedule is rarely changed by the shift manager.

Table games supervisors do not wear uniforms. They wear "business-casual" clothes, such as a shirt with the Employer's logo and slacks, a suit, or a coat and tie. Table games supervisors are paid between \$16.00 and \$20.00 an hour, but do not receive tokens. Table game supervisors are permitted to take their meals in guest areas, such as the Employer's restaurants. Table games supervisors report to

work 15 minutes before the beginning of the shift. They receive two paid 15-minute breaks and one paid 30-minute break.

Dealer/Supervisors

The Employer also has employees classified as “dealer/supervisors.” Depending on the Employer’s needs, these employees are either assigned to work a shift as a dealer or as a table games supervisor. According to the Employer, this classification gives it flexibility in scheduling to cover supervisor shortages due to vacations, leave, or training. This classification also permits on the job training for dealers to become supervisors.

The dealer/supervisors are sometimes referred to as “dual rate” employees because they receive a different rate of pay depending on their job assignment. Upon arriving at work, dealer/supervisors swipe a time clock with their ID badge and, depending on what job they are working, punch in either the “dealer” code or the “supervisor” code. When these “dual rate” employees are working as dealers, they receive the dealer wage rate, plus tokes, wear the dealer uniform, and are “tapped out” to take breaks on the rotation. When these employees are acting as supervisors, they receive the supervisor wage rate (no tokes), wear business casual clothes, and take the same breaks granted the table games supervisors. Different dealer/supervisors average different amounts of time working as a supervisor. For the year 2000, one such employee spent approximately 27% of her time working as a supervisor while another spent approximately 56% of his time in this capacity.

It appears from the record that when dealer/supervisors work as supervisors, they participate in the day-to-day activities of opening and closing gaming tables with the dealers, completing CTR’s and SAR’s, as necessary, issuing comps, and dealing with guest concerns or problems. However, there is no evidence in the record that dealer/supervisors have auditioned dealer applicants or taught at the dealer school; nor is there any evidence that dealer/supervisors have ever disciplined, scheduled, evaluated, or written a “work history” for a dealer. Dealer/supervisors do not receive the core training that relates to these supervisory functions.

Supervisors/Pit Administrators

The supervisor/pit administrators job classification is between the table games supervisor and the assistant shift manager/pit administrator position in the Employer’s supervisory hierarchy. Like

the dealer/supervisors, the supervisor/pit administrators are assigned to one position or another for a shift. Upon arriving at work, supervisors/pit administrators swipe a time clock with their ID badge and, depending on what job they are working, punch in either the “supervisor” code or the “assistant shift manager/pit administrator” code. Different supervisor/pit administrators average different amounts of time working as a pit administrator. For the year 2000, one such employee spent approximately 35% of his time working as a pit administrator while another spent approximately 87% of his time in this capacity.

The four supervisor/pit administrators exercise all the authority of the table games supervisors, as well as that of the assistant shift manager/pit administrator when they are acting in that capacity. Thus, the supervisor/pit administrators audition and interview dealer applicants and discipline and evaluate dealers. There is evidence in the record that supervisor/pit administrators have issued dealers verbal and written warnings and negative work histories.

Supervisors/pit administrators are paid hourly, but the record does not reflect their wage rate. They do not wear a uniform, but are permitted to wear business-casual attire or a suit. Supervisor/pit administrators receive two paid 15-minute breaks and one paid 30-minutes break. They may take their meals in the guest areas, such as the Employer’s restaurants.

DISCUSSION AND DETERMINATION

The question to be decided is whether the Employer’s dealer/supervisors, table games supervisors, and supervisor/pit administrators are supervisors within the meaning of the Act and therefore should be excluded from a unit of dealers. Supervisory status under the Act depends on whether an individual possesses authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act, which defines the term “supervisor” as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In enacting Section 2(11), Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw

bosses, leadmen, setup men and other minor supervisory employees.” See Senate Rep. No. 105, 80th Cong., 1st Sess. 4 (1947). The Board has long recognized “there are highly skilled employees whose primary function is physical participation in the production or operating processes of their employer’s plants and who incidentally direct the movements and operations of less skilled subordinate employees,” who nevertheless are not supervisors within the meaning of the Act since their authority is based on their working skills and experience. Southern Bleachery & Print Works, Inc., 115 NLRB 787, 791 (1956), enf’d 257 F.2d 235 (4th Cir. 1958), cert. denied, 359 U.S. 911; Gulf Bottlers, Inc., 127 NLRB 850, n. 3, 858-861 (1960), enfd. sub nom, United Brewery Workers v. NLRB, 298 F.2d 297 (D.C. Cir. 1961).

The party seeking to exclude an individual from voting for a collective bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan Inn, 281 NLRB 226, 229-230 fn. 12 (1986). As stated in The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989): “in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists.” Tucson Gas & Electric Co., 241 NLRB 181 (1979), Dickinson-Iron Agency, 283 NLRB 1029, 1034 (1987).

In view of the above, I find that table games supervisors and supervisor/pit administrators are supervisors within the meaning of the Act. The Employer has established, through testimony and documents, that these employees perform many of the functions listed in Section 2(11) of the Act. For example, the table games supervisors and supervisor/pit administrators actively participate and make effective recommendations in the hiring process. The table games supervisors and supervisor/pit administrators audition dealer applicants. The auditions are more than just a mere test that the applicant either passes or fails. Cf. Hogan Mfg., 305 NLRB 806 (1991). Rather, they are a detailed examination and rating of the dealer applicant’s abilities in a number of subjective and objective areas, with the table games supervisors and supervisor/pit administrators grading the applicants on areas such as potential, appearance, guest relations, check cutting, buy-ins, and pay offs. The table games supervisors’ and supervisor/pit administrators’ ratings of the applicants involve the use of independent judgment and carry substantial weight in the Employer’s decisions regarding hiring.

There is also ample record evidence that the table games supervisors and supervisor/pit administrators discipline dealers. Both supervisors and supervisor/pit administrators have, in fact, issued dealers verbal and written warnings and negative work histories to dealers. These warnings and work histories are steps in the Employer's progressive disciplinary system and directly impact the dealer's transfer and/or promotion opportunities. Similarly, the table games supervisors and supervisor/pit administrators prepare the performance evaluations of dealers, rating them in critical areas and making suggestions for improvement. These evaluations are the Employer's primary tool in rating a dealer's potential for transfer or promotion. Clearly, the table games supervisors and supervisor/pit administrators are supervisors within the meaning of the Act and I exclude them from the unit found appropriate herein.

The Employer has not, however, established its position that the dealer/supervisors are supervisors within the meaning of the Act. Despite generalized testimony that dealer/supervisors act as supervisors when assigned to that role, there is no evidence that these employees perform any of the functions listed in Section 2(11) of the Act. Thus, there is no evidence that dealer/supervisors have ever interviewed or auditioned dealer applicants. There is no evidence that dealer/supervisors have issued verbal or written warnings or work histories (positive or negative) to dealers. There is no evidence that dealer/supervisors have ever evaluated dealers. The Employer contends in its brief, and the record establishes, that the dealer-supervisors act or fill-in for the table games supervisor on a regular and substantial basis. See Aladdin Hotel, 270 NLRB 838 (1984). However, unlike the substitute boxmen and floormen in Aladdin, the dealer/supervisors do not exercise supervisory authority while substituting. Aladdin Hotel, *supra*, at 840; see also Doctors Hospital of Modesto, 183 NLRB 950 (1970) and Honda of San Diego, 254 NLRB 1248 (1981).

The fact that dealer/supervisors do not undergo the "core training" on how to properly hire, evaluate or discipline employees underscores the conclusion that the Employer does not utilize these employees to perform these supervisory functions. Rather, dealers/supervisors are scheduled as "supervisors" simply to cover the floor when there is a temporary shortage of table games supervisors (due to, for example, vacations and other kinds of leave). Indeed, when dealer/supervisors are acting as table games supervisors, it appears that, at most, any "supervision" of the dealers is limited only to

the more routine aspects of the job -- assisting in the opening and closing of the gaming table, observing the dealers at work, completing CTR and SAR forms, and issuing “comps.” In these circumstances, I conclude that dealer/supervisors are not supervisors within the meaning of the Act and should be included in a unit of dealers.

5/ Your attention is directed to Part 103, Subpart B, Section 103.20 of the Board's Rules and Regulations, Series 8, as amended, which provides, inter alia, that employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election, that failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed, and that an employer shall be estopped from objecting to nonposting or late posting of Notices unless it notifies the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received the Notices. You may wish to review the above rule in its entirety so that you are fully aware of its complete contents and the obligations imposed by it.

6/ The full first and last names and addresses of all eligible voters must be filed by the employer. North Macon Health Care Facility, 315 NLRB 359 (1994).

Classification Index Code: 460 2550 8700; 460 2550 8700
Date Issued: 2/7/01